



# **ADVOCACY TOOLKIT**

## **Campaign for a new Optional Protocol to the CRC establishing a communications procedure**

**For activities targeting the Open-ended Working Group to  
elaborate a new OP to the CRC (December 2010 –  
February 2011) and the Human Rights Council June 2011  
session**

**June 2010**

## **About the NGO Group for the CRC**

The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations, which work together to facilitate the implementation of the United Nations Convention on the Rights of the child. It was originally formed in 1983 when members of the NGO Group were actively involved in the drafting of the Convention.

Since the adoption of the Convention, the NGO Group has been supporting the work of national and international NGOs as well as the Committee on the Rights of the child to monitor and implement the Convention and its Optional Protocols.

Our mission is to promote, implement and monitor the UN Convention on the Rights of the Child.

## **How to use this Advocacy Toolkit**

This Advocacy Toolkit has been prepared by the NGO Group for the CRC to support those who are interested in joining the campaign for a communications procedure under the Convention on the Rights of the Child.

It contains background information about the campaign, lists of campaigning and lobbying activities you could undertake at national level, questions and answers, a glossary and a feedback form.

The present toolkit is a revised version of previously published toolkits. We endeavour to send you an updated version every time some significant developments happen with regards to the campaign.<sup>1</sup> It is designed to inform and support those who are interested in joining the campaign for a communications procedure under the Convention on the Rights of the Child.

Updated versions will be circulated via the CRINMail and members of the NGO Group as the OP process unfolds.

For this campaign to succeed, it is crucial that we all join forces. The NGO Group for the CRC is coordinating the campaign, particularly in Geneva at UN level. As a network, our aims are to strengthen links between national and international advocacy and lobbying actions.

Through the CRIN website and CRINmails, we send regular updates on the UN process regarding the new Optional Protocol as well as ways to engage.

## **Tell us what you think about this Toolkit**

We would very much appreciate any comment you might have on this Advocacy Toolkit. We would particularly like to know how you have used it, what you found most helpful and if you think that other aspects of the campaign should be addressed.

We have also included two questionnaires at the end of this toolkit for you to fill out and send back to us. Thank you!

Please email Anita Goh, the NGO Group for the CRC Advocacy Officer at the UN, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org) with your comments or if you wish to know more about your State's position on this initiative in Geneva.

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<sup>1</sup> A first toolkit was circulated in December 2009 to prepare the first session of the UN Open-ended Working Group.

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## How the campaign started

In 2007, a group of child rights organisations initiated a campaign for a new Optional Protocol to the UN Convention on the Rights of the Child (CRC) establishing a communications procedure. Such a procedure would provide a mechanism that would ensure the availability of legal remedies for children at the international level.

The campaign was later established as a Working Group of the NGO Group for the CRC. Founding organisations include: Child Rights Information Network (CRIN), European Network of Ombudspersons for Children (ENOC), Global Initiative to End All Corporal Punishment of Children, Kindernothilfe, Plan International, Save the Children Norway, Save the Children Sweden, Save the Children UK, SOS Villages International, World Organisation against Torture (OMCT) and World Vision International.

In 2009, the Working Group started an important awareness raising campaign to mobilise support from UN Member States as well as NGOs and UN experts both in Geneva and at national level. Activities included organising events and expert meetings on the new OP, including during the official celebration of the 20<sup>th</sup> anniversary of the CRC in Geneva, submitting and delivering written and oral statements at the UN Human Rights Council, producing leaflets and advocacy papers and lobbying States in Geneva and in capitals. Thanks to the coordination of efforts at both national and international levels, a 'core group of friendly States' was formed and backed the idea of proposing a new OP to the Human Rights Council.

By May 2010, over 600 international and national NGOs, National Human Rights Institutions (NHRIs) and other bodies had signed a petition: "An international call to strengthen the enforcement of the UN Convention on the Rights of the Child by the drafting and adoption of an Optional Protocol to provide a communications procedure"<sup>2</sup>.

### What is a communications procedure?

A communications or complaints procedure allows individuals, groups or their representatives who claim that their rights have been violated by a State that is party to an international human rights *Convention* or *Covenant* to bring a complaint before the relevant '*treaty body*' or *Committee*, provided that the State has recognised the competence of the Committee to receive such complaints.

As mentioned above, communications procedures are also called 'complaints mechanisms'. Some are 'individual complaints mechanisms', this means that only individual victims or groups of victims can complain about violations of their right(s). If they are not limited to individuals, they will be referred to as '*collective complaints*'. This means that a complaint can be brought on behalf of a group by, for instance, an NGO, and they do not have to represent an individual victim.

Given the special status of children and the special difficulties for them in seeking remedies, it seems essential to allow the possibility of collective complaints by international and national NGOs or other, with particular competence in the matters covered by the CRC, alleging unsatisfactory application of any of the rights set forth in the CRC by a State party.

This is why we use the term "communications procedure" in our campaign instead of "individual complaints mechanism".

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<sup>2</sup> To sign the petition and for further information, see <http://www.crin.org/petitions/petition.asp?petID=1007>

## Why we need a communications procedure under the CRC

The CRC is the only core international human rights treaty without a communications procedure; this means that children and their representatives are unable to pursue the full range of rights under the Convention and its two Optional Protocols to an international mechanism. This is a serious matter of discrimination against children.

The Committee on the Rights of the Child has stated that it believes such a procedure “would significantly contribute to the overall protection of children’s rights” and the UN High Commissioner for Human Rights, Ms. Navanethem Pillay said that this “mechanism could significantly strengthen the monitoring of the Convention and the furtherance of children’s rights”<sup>3</sup>.

### A new communications procedure under the CRC is needed because:

- The full range and detail of rights in the CRC are not covered, separately or together, by any other human rights mechanism;
- Children must have an international mechanism to appeal to when national remedies do not exist or are ineffective.
- Even when admissible, child rights complaints to existing human rights bodies are not considered by a Committee with expertise on children’s rights.

### An international communications procedure will:

- Complement the State party reporting process and reinforce the implementation of the CRC
- Encourage States to strengthen/develop appropriate remedies at national level
- Provide practical and authoritative interpretation of the CRC provisions, States’ obligations and perspectives on implementation
- Develop international *jurisprudence* and influence domestic judicial systems
- Raise international recognition of children as rights holders
- Provide *interim measures* to avoid possible irreparable damage to the well-being and development of a child, or children, concerned by a communication
- Allow the Committee on the Rights of the Child to undertake inquiries if they receive reliable information indicating grave or systematic violations of rights set forth in the CRC by a State party

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<sup>3</sup> Presentation of the UN High Commissioner for Human Rights at the UN conference celebrating 20<sup>th</sup> birthday of the CRC, 8 October 2009, Geneva, Switzerland

## How do we achieve this?

Establishing this communications procedure will be done by developing a new *Optional Protocol* (OP) to the CRC.

An Optional Protocol is a stand alone treaty that needs to be ratified by States. It is important to keep in mind that such treaties are drafted by governments, in this case, by all UN Member States interested. This is why governments' support is essential.

Getting a new OP established would normally consist of five key stages:

- 1) States support the idea and create an appropriate forum for discussion, usually this will be called an intergovernmental 'Open-ended Working Group' (OEWG)<sup>4</sup>.
- 2) Such an OEWG discusses the proposal for the OP and gets backing from the UN on the need for the OP to be drafted
- 3) The OEWG drafts the OP and adopts it.
- 4) The draft is adopted by the HRC, then by the UN General Assembly (GA)
- 5) The new OP is open for signatures and ratification.

Consensus: It is important to know that usually, States must reach consensus before moving onto the next step. This will usually be done by adopting a Resolution in the Human Rights Council.

## Latest developments

In June 2009, the HRC adopted a first resolution (A/HRC/RES/11/1) establishing an "Open-ended Working Group" (OEWG) to explore the possibility of elaborating a new communications procedure for the CRC.

In December 2009, the OEWG held a three day meeting<sup>5</sup> during which State representatives, UN agencies, independent experts, NGOs and others discussed different aspects of an OP<sup>6</sup>.  
LINK

In March 2010, the HRC adopted a Resolution (A/HRC/RES/13/3) changing the mandate of the OEWG from simply 'considering' the need for an OP to actually drafting the procedure. The Resolution also requires the Chairperson to prepare an initial draft of the OP for the next meeting.

Since then, the Chairperson of the OEWG has been holding information talks and

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<sup>4</sup> An 'Open-ended Working Group' or OEWG is open to all interested States. This means that its composition is not formally set and thus might change from one session to another. All stakeholders can attend the sessions of an OEWG. Although it is an intergovernmental forum, the Chairperson usually allows other stakeholders, such as NGOs, to take the floor during the Working Group's discussions.

<sup>5</sup> The meeting was initially scheduled to last for five days but had to postpone. See xxx

<sup>6</sup> For the full report of the session and the submissions made by the experts, see <http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/index.htm>

For an account of the session day by day, see <http://www.crin.org/resources/infoDetail.asp?ID=21261&flag=event>

consultations with governments, representatives of civil society and key experts to collect inputs for his initial draft.

The next meeting of the OEWG is scheduled to take place in early December 2010 in Geneva. During this meeting, States will discuss the proposed draft. If they reach consensus on the draft, it will go to the HRC for adoption, if not, they will hold another five day meeting in early 2011.

## **Next Meeting of the OEWG in Geneva: December 2010**

### **Mandate of the OEWG – Resolution A/HRC/RES/13/3**

The mandate of the Working Group, officially referred to as the Open Ended Working Group (OEWG), is 'to elaborate an optional protocol to the [Convention on the Rights of the Child](#) to provide a communications procedure'.

As mentioned in the previous section, the Resolution (A/HRC/RES/13/3) that changed the mandate of the OEWG also asks that the Chairperson prepares a draft text of the OP. Specifically, "taking into account the views expressed and inputs provided during the first session of the OEWG in December 2009 and giving due regard to the views of the Committee on the Rights of the Child and, where appropriate, to the views of relevant United Nations special procedures and other experts".

It is however expected that his proposal for a draft will contain provisions similar to those established in existing international communications procedures with a few new elements that were raised during the first session of the OEWG in December 2009.

This first draft is expected to be ready by mid-July 2010, in English, and circulated in all six core UN languages by the end of September 2010. This draft will form the basis for the OEWG's forthcoming negotiations.

As per the Resolution, the OEWG will be able to meet for up to ten days in the coming year, divided into two five-day sessions. If the OEWG does not reach consensus on a draft in December, a second five-day session will be scheduled for early 2011.

If consensus is reached after the December session, the OEWG will report back to the HRC at the March 2011 session, if a second session is necessary, the OEWG will report back to the HRC in June 2011 at the latest.

### **Next session of the OEWG**

The next session is scheduled to take place from **6 to 10 December 2010** in Geneva, Switzerland. All States will be invited. One representative of the Committee on the Rights of the Child is expected to be invited as a resource person and other relevant stakeholders, such as UN experts, representatives from UN agencies, Children's Ombudspersons and NGOs may also attend, provided that they have the appropriate accreditation.

Similarly, those interested (who hold the appropriate accreditation) can make written contributions in advance of the meeting<sup>7</sup>.

### **Format of the negotiations**

The negotiations will be led and moderated by the Chairperson-Rapporteur of the OEWG who will be elected/agreed upon at the beginning of the session. It is expected however that the Chairperson will remain Mr Drahoslav Štefánek (Slovakia) who chaired the first session of the

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<sup>7</sup> Rules for submitting a written contribution to the OEWG are similar to those explained above : NGOs need to either have ECOSOC status, or submit a contribution together with an ECOSOC status NGO; Children's Ombudsmen need to either be considered as a Status A National Human Rights Institution (NHRI) or be submit together with a Status A NHRI.

OEWG. Intergovernmental agencies, NGOs and National Human Rights Institutions present should be able to make statements on each draft provision after States' discussions.

The exact methodology and format of the session are still unknown and might change as the negotiations develop.

The outcome report of the session should include a summary of proceedings of the OEWG and potentially a draft OP.

### **Outcome of the negotiations**

The OEWG's session(s) can reach two different outcomes:

#### **1) Consensus on a draft OP**

If consensus is reached through one or two session, the Chairperson-Rapporteur will report back to the HRC and present the draft OP for adoption.

#### **2) No consensus on a draft OP**

If consensus is not reached, the Chairperson-Rapporteur will report back to the HRC and request a new resolution to extend the mandate of the OEWG in order to continue negotiations.

# What can you do?

If we want this new OP to be effective and used by children and young people, it is essential that we work together on influencing the negotiations and States' positions.

Below are some suggestions for activities you could undertake. You can also contact us if you would like to find out more on your government's position.

## **1. Sign the petition**

Over 600 organisations from around the world have already signed it. The petition was launched in January 2008 calling to strengthen the enforcement of the UN Convention on the Rights of the Child by the drafting and adoption of an Optional Protocol to provide a communications procedure.

If you have not signed it yet, go here: <http://www.crin.org/petitions/petition.asp?petID=1007>

## **2. Network with other NGOs**

You could find out whether other like-minded NGOs in your country are active on this campaign or would like to join forces with your organisation. For instance:

- Find out whether there is a National Coalition in your country by going to the website of the NGO Group: <http://www.childrightsnet.org/>
- Find out who has signed the petition from your country as they may well be willing to work together with you on campaigning activities: <http://www.crin.org/petitions/signatures.asp?petID=1007&orderby=country>
- You can find links to other NGOs on the CRIN website here: <http://www.crin.org/organisations/index.asp>

## **3. Contact your Children's Ombudsperson or Commissioner**

A number of children's ombudspersons have already signed the campaign and some have taken part in meetings. It is very important to get the support of ombudspersons.

1. Is there an ombudsperson in your country?

**Europe**, check here: <http://www.crin.org/enoc/members/index.asp>

**Latin America** and **Oceania**: <http://www.crin.org/enoc/network/index.asp>

2. If you are not sure, you can also contact the general national human rights institution:

For **Africa**, contact the Permanent Secretariat of the Network of African NHRIs

Mr. Gilbert Sebihogo ([gsebihogo@knchr.org](mailto:gsebihogo@knchr.org))

For **Asia-Pacific**, you can contact the Asia Pacific Forum

<http://www.asiapacificforum.net/>

Mr. Kieren Fitzpatrick ([kierenfitzpatrick@asiapacificforum.net](mailto:kierenfitzpatrick@asiapacificforum.net))

Further links to National Human Rights Institutions from the website of the OHCHR:

<http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

## **4. Lobby your government**

While developments at the UN might seem very far away and abstract, you have a crucial role to play, in your respective countries. Some suggestions for what you can do:

1. Write to your Ministries to find out whether your country knows about this process. If not, send them information about it and request a meeting.
2. Find out whether the relevant Ministries have discussed a formal position on this issue.
3. Find out whether they will be involved in the December meeting.

Once the Chairperson's proposal for a draft is officially circulated in September 2010:

4. Find out what is the reaction of your State to the proposal for a draft and what will be its position and key issues/concerns during the December meeting

## **5. Media activities**

- Write an article or an opinion piece about this campaign and try and get it published in your national or local paper
- Contact any journalist you may know who would be sympathetic to this issue and ask them to write about it
- HELP? If you need advice on writing to the media, check out CRIN's Media Toolkit. See further tools and information section [[http://www.crin.org/docs/media\\_toolkit2.pdf](http://www.crin.org/docs/media_toolkit2.pdf)]

## **Feedback: We need your input**

To be more influential, it is very important that we share information and experiences on our lobbying efforts. We need you to tell us about activities you have been involved in, whether you got any media coverage, or a response from your Ministries , etc.

At the end of this toolkit, you will find a **feedback form**, which we kindly ask you to fill out and send back to us. Email Anita Goh, the NGO Group for the CRC Advocacy Officer at the UN, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

We would also like to collect examples of existing effective child sensitive complaints procedures, whichever levels or sectors these may be in. For this purpose we have also drafted a **questionnaire** which we would be grateful if you could fill out and send back to us.

## **Further tools and information that might be useful to you:**

- Webpage of OHCHR on the UN Open-ended Working Group : <http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/index.htm>
- Find out whether your government has ratified other similar communications procedures under other UN treaties or regional systems. Go here: [http://www.crin.org/docs/Ratification\\_table\\_December2009.pdf](http://www.crin.org/docs/Ratification_table_December2009.pdf)
- Further news and information: [http://www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)
- Children's use of existing regional and international complaints mechanisms: [http://www.crin.org/docs/Children's\\_use\\_of\\_complaints\\_procedures09.doc](http://www.crin.org/docs/Children's_use_of_complaints_procedures09.doc)

## Political support for the OP CRC

Although some States have been envisaging a communications procedure for quite some time (like Germany, Slovenia, or the *MERCOSUR* States) and African States already have such a mechanism under the *African Charter on the Rights and Welfare of the Child*, It took time (still is for some) for many to feel comfortable with the idea of having such a mechanism for children.

However, we are now at the drafting stage, and must ensure that all participating States understand the implications of such a mechanism for children and understand how vital it is that this mechanism is child-sensitive.

### States that participated in meetings, or sponsored the resolution include:

Albania, Algeria, Andorra, Argentina, Australia, Austria\*, Azerbaijan, Belarus\*, Belgium, Bolivia\*, Bosnia and Herzegovina\*, Brazil\*, Chile\*, China, Canada, Colombia\*, Costa Rica\*, Côte d'Ivoire, Croatia\*, Cyprus\*, Czech Republic, Denmark, Dominican Republic\*, Ecuador\*, Egypt\*, Finland\*, France\*, Germany\*, Greece, Guatemala\*, Honduras\*, Hungary, Iceland\*, India, Ireland, Italy\*, Japan, Kazakhstan\*, Kenya\*, Kyrgyzstan, Lebanon, Liechtenstein\*, Lithuania\*, Luxembourg, Maldives\*, Malta, Mexico, Moldova, Montenegro\*, the Netherlands, Nicaragua, Norway, Panama, Pakistan, Paraguay, Peru, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Senegal\*, Serbia\*, Singapore, Slovakia\*, Slovenia\*, South Africa, Spain\*, Sri Lanka, Sweden, Switzerland, Thailand\*, Turkey, Uganda, Ukraine\*, the United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, the United States of America, Timor-Leste, Uruguay\*, Venezuela, the former Yugoslav Republic of Macedonia\* and Zimbabwe<sup>8</sup>.

It is important to note that even if they have been supportive or interested up until now, it does not mean they will continue to do so at the next meeting. New issues or concerns could emerge. Some states were participating, but remained quiet, it is possible that this could change. Therefore:

**- If your State is included in this list**, use this information to approach them and ask them what next steps they intend to take.

**- If your State is not included in this list**, it means that they either do not know about the process, or are not interested. In either case, you can use the fact that a new resolution was adopted by the HRC in March 2010 and that the Open-ended Working Group will work on the draft OP in December 2010. You should then ask whether they intend to participate and what their position will be.

If you would like some more specific information regarding your State's position, contact Ms Anita Goh, Advocacy Officer for the NGO Group for the CRC, on [goh@childrightsnet.org](mailto:goh@childrightsnet.org) or +41 774460083.

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<sup>8</sup> All states marked with \* co-sponsored both the first resolution A/HRC/RES/11/1 establishing an Open-ended Working Group to explore the possibility of elaborating a new OP in March 2009 and the second resolution A/HRC/RES/13/3 which mandated the OEWG to draft the OP in March 2010.

Albania, Andorra, Azerbaijan, Denmark, Greece, Hungary, Lebanon, Luxembourg, Malta, Mexico, the Netherlands, Nicaragua, Panama, Paraguay, Peru, Portugal, the Republic of Korea, Romania and Sri Lanka only co-sponsored A/HRC/RES/11/1

Uganda, United Republic of Tanzania, Timor-Leste and Zimbabwe only co-sponsored A/HRC/RES/13/3

All the other states listed participated to the negotiation of the resolutions but decided not to co-sponsor any of them

## **What the procedure should look like**

Below are the key provisions that we believe should be contained in the new OP to the CRC. They are based on existing provisions from other international complaints mechanisms, but also take into account the specific needs of children as complainants.

We invite you to use the following points as your advocacy brief when you discuss the OP with your State, if any point remains unclear to you, don't hesitate to contact the NGO Group Advocacy Officer, Anita Goh, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

### **Who can submit a complaint? Complainants**

- Communications submitted by or on behalf of a child or groups of children
- Child's consent unless the representative can justify acting on their behalf without such consent, in which case the Committee shall decide whether it is in the best interests of the child or children to consider the communication
- Collective communications by international NGOs with particular competence in the matters covered by the Convention should be allowed (those communications would not need to be related to an individual victim and would be based on the unsatisfactory application of any of the rights set forth in the Convention – Opt-in option for the State party)

### **Complaint**

- Communications claiming a violation of any of the rights set forth in the CRC or in one of its Optional Protocols
- Non-written material should be allowed, such as audio-visual material, drawings, etc

### **Exception to exhaustion of remedies**

- The rules of exhaustion of remedies should be child-specific: the Committee shall interpret “unreasonably prolonged” in a manner sensitive to the impact that delays may cause to the child's or children's well-being and development

### **Procedure**

- Procedural delays should be reduced the Committee should bring any communication to the attention of the State party concerned “without delay”;
- The receiving State party should submit written explanations to the Committee “within 3 months” (instead of 6);
- The Committee should transmit its views, and recommendations, if any, on the communication to the parties concerned “without delay”;
- The State party concerned should submit any written response, including information on any action taken in the light of the views and recommendations of the Committee, “within 3 months” (instead of 6)
- The Committee should be able to hold open meetings (instead of the traditional closed

meetings when examining communications) if it decides that it is in the best interests of the child or children concerned.

### **Interim measures**

- Interim measures should be possible
- The rules for interim measures should be child-specific as to also avoid possible “irreparable damage” to the well-being and development of the child or children concerned.

### **Inquiry procedure**

- Inquiry procedures should be possible if the Committee receives reliable information indicating grave or systematic violations by a State party of the rights set forth in the Convention. The State party concerned should submit its observations to the Committee's findings, comments and recommendations “within 3 months” (instead of 6)

### **Confidentiality, protection and support**

- Protection of the child's privacy: the identity of the child or group of children concerned shall not be revealed to the State party or otherwise without his/her/their express consent.
- Protective measures for the child:
  - State Parties should ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of submitting a communication to the Committee
  - the Committee shall establish, in its *Rules of Procedure*, a mechanism to ensure that petitioners receive adequate protection and support
- The Committee should give particular attention to the need to adopt working methods and rules of procedures that are in the best interest of children.

### **Publicity**

- States Parties should undertake to make the principles and provisions of the OP widely known and promoted by appropriate means, to adults and children alike
- States Parties should undertake to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State party, by adults and children alike.
- In determining whether and how to publicise communications under the OP, the best interests of the child or children concerned should be the paramount consideration.

## **Key answers to questions about the new OP CRC in preparation of the drafting session of the OEWG in December 2010 (short version)**

Based on the Chairperson's proposal for a draft that will be circulated to all UN missions by September 2010 at the latest, the Open-ended Working Group will elaborate a draft OP and participating States will negotiate each of the future provisions of the new OP CRC.

Below you will find key answers to the questions that your State might raise in this context. Providing your State with convincing answers and suggestions will no doubt influence the drafting process and ensure that the new international communications procedure is tailored to children's needs. You can use the following brief in your discussions with State representatives.

### **HOW A COMMUNICATIONS PROCEDURE UNDER THE CRC WOULD WORK**

- The implementation of a communication procedure under the CRC will build on the experience and best practices of existing communications procedures of the other treaty bodies and the regional human rights systems.
- Children with the necessary understanding and capacity to pursue communications are not very different from adults (and many adults, like children, have special protection/communication needs). Most communications to the existing procedures are made by adults with the support of organizations, lawyers or both. Most children with capacity will need exactly the same sort of support.
- Children, especially young children, who lack the capacity to draft and submit a communication will need to be fully supported and represented by adults. This lack of capacity will certainly represent the major challenge of a communications procedure under the CRC. However, just as for people with disabilities, lack of capacity cannot be invoked to question the universal recognition of children as right holders and its corollary, the provision of adequate remedies in case of violation of their rights. Innovative mechanisms, drawing from national and/or regional best practices, will need to be incorporated in the Optional Protocol to ensure that all children can enjoy protection of the full range of their rights.
- In order to ensure children's protection and avoid putting them unnecessarily at risk, the communication procedure will have to be designed with children's safety in mind and allow for specific safeguards for vulnerable petitioners – anonymity provisions, protection from reprisals, etc.
- The Committee on the Rights of the Child and its Secretariat in the Office of the High Commissioner for Human Rights (OHCHR) are widely acknowledged to have developed an efficient reporting system. They have responded effectively to the demands created by the almost universal ratification of the Convention and substantial additional ratification of the two existing Optional Protocols to the CRC. The Committee together with OHCHR has made special arrangements, including a two-chamber system, to deal effectively with the build-up of reports. Similarly, when the communications procedure enters into force, it will enjoy support from the Petitions Team Unit of the OHCHR, which filters and administers communications submitted under other procedures.

## **Key answers to questions about the new OP CRC in preparation of the drafting session of the OEWG in December 2010 (long version)**

Below are more detailed questions and answers that cover most issues and concerns regarding the Optional Protocol. These should also help you in your advocacy work.

### **1 – Should the new international communications procedure apply to all the rights covered by the CRC?**

YES. Although it is true that some rights guaranteed by the CRC might be found under other existing binding international instrument, there will be minimal overlaps with existing international complaints mechanisms.

Indeed, all rights under the CRC are unique in the sense that they are to be interpreted in the light of the general principles set out in the Convention identified by the Committee in its General Comment No. 5, paragraph 12, as being:

**Article 2:** the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures;

**Article 3(1):** the best interests of the child as a primary consideration in all actions concerning children, including those that indirectly affect children;

**Article 6:** the child's inherent right to life and States parties' obligation to ensure the maximum extent possible the survival and development of the child. Implementation measures should be aimed at achieving the optimal development for all children;

**Article 12:** the child's right to express his or her views in “all matters affecting the child”, those views being given due weight. This principle applies equally to all measures adopted by States to implement the Convention.

Those general principles show that effective implementation of the CRC requires a holistic approach of the Convention. The same approach is needed to decide on complaints claiming violations of child rights and only the Committee on the Rights of the Child is competent to do so.

Concerns over duplication of international mechanisms have proven unproblematic for the existing communications procedure (see the competence of CAT and the HR Committee over torture communications) thanks to the well established principle of non duplication and the existence of procedural clauses that prevent the simultaneous examination of a communication by two or more international mechanisms.

In addition, once the Optional Protocol establishing such procedure under the CRC will come into force, one can expect that this type of 'overlap' won't occur as child victims will rather submit their communications to their expert committee.

Furthermore, the question of the justiciability of economic, social and cultural rights has been settled with the adoption of the OP to the ICESCR and thus no distinction should be made

between economic, social and cultural rights and civil and political rights covered by the CRC.

All existing communications procedures apply to the full range of rights provided by the relevant international instrument and there is no reason why this approach should be different in the case of child rights. Picking and choosing which rights children can claim would be a very negative setback to the quasi-universal recognition of the need for the full range of rights provided by the CRC and of children as right-holders.

## **2 – Should the new international communications procedure apply to the rights covered by the CRC and the rights covered by the two existing OPs to the CRC?**

YES, the new OP should allow for this possibility.

The two existing Optional Protocols to the CRC provide details and specificities about some rights under the CRC and Ms Yanghee Lee, the current Chairperson of the Committee on the Rights of the Child, stressed that those rights would certainly benefit from a communications procedure.

A provision whereby States could choose whether the communications procedure applies to the CRC or to the CRC and one or both of the Optional Protocols could be envisaged.

## **3 – What will be the relationship between domestic and international procedures?**

As with the other communications procedure, communications under the CRC will only be admissible if domestic remedies available to children have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

Considering the special status of children, the Committee shall interpret “unreasonably prolonged” in a manner sensitive to the impact that delays may cause to the children's well-being and development.

This 'exhaustion of domestic remedies' requirement ensures that where the national system is effective, chances that the victims will eventually turn to the treaty body are very low. In cases where national systems fail however, victims will have the possibility to ask for redress at the international level.

If a violation is found by the treaty body, the communication will serve as a warning to the State party concerned by highlighting the failure of its national system and encouraging the State to amend it in accordance with the treaty body's recommendations. If the State party correctly implements those recommendations, the communications procedure will have ensured that similar cases can be addressed and redressed at the national level in the future.

This type of procedure is complementary to the state reporting obligations as it enables the Committee to provide more specific recommendations through concrete individual cases.

## **4 – How would children be represented (concern regarding the risk of manipulation and instrumentalisation of children)?**

None of the existing communications procedures impose any requirement concerning the legal capacity of individuals submitting a communication.

In practice, most communications to the existing procedures are made by adults with the support of organizations, lawyers or both. Likewise, most children with reasoning capacity will need exactly the same sort of support.

Children, especially young children, who lack the capacity to draft and submit a communication

will need to be fully supported and represented by adults who will present their claims and represent their interests. Since they might not be of an age to authorize such representation, flexibility in that regard will be needed.

Innovative mechanisms, drawing from national and/or regional best practices, will need to be incorporated in the Optional Protocol to ensure that all children can enjoy protection of the full range of their rights.

For instance, to decide whether a person is qualified to represent the interests of a child, the European Court of Human Rights has decided that account must be taken of the link between a child and his/her representative the object and purpose of the application, and any conflict of interest (see for instance *S.P., D.P., and A.T. v. UK*, 20 May 1996, Application No 23715/94 (in English) and *Giusto, Bornacin and V. v. Italy*, 15 May 2007, Application No 38972/06 (in French)).

The Inter-American Commission accepted a complaint presented by two NGOs, the Centre for Justice and International Law (CEJIL) and Casa Alianza, on behalf of five dead children (see *Villagrán Morales et al. v. Guatemala*, 19 November 1999, the “Street Children” case).

In the context of a communications procedure under the CRC, a key criteria to use to ensure that those representing children are not instrumentalising their cases would be through the determination of whether the representative is acting “in the best interests of the child”, to be determined by the CRC. In addition, a provision in the OP ensuring the right to be heard of children by the Committee would be a supplementary safeguard in that regard.

## **5 – How would the mechanism work in practice?**

The implementation of a communication procedure under the CRC will build on the experience and best practices of existing communications procedures of the other treaty bodies and the regional human rights systems.

It will be similar to the existing communications procedures with the addition of specific provisions taking into account the specificities of children, such as the representation of children and their right to be heard. In order to ensure children's protection and avoid putting them unnecessarily at risk, the communication procedure will also have to be designed with children's safety in mind and allow for specific safeguards for vulnerable petitioners, such as anonymity provisions, protection from reprisals, etc.

## **6 – What are States' obligations under a communications procedure?**

Under existing communications procedures, concerned States Parties are required to cooperate with the relevant treaty body and provide information on communications submitted to the treaty body. States Parties usually have six months to present submissions on the admissibility and on the merits of communications.

If a violation is found by the treaty body, the State party will be invited to inform the treaty body on the course of action taken in conformity with the treaty body's suggestions and/or recommendations.

## **7 – How would the implementation/follow-up of decisions on communications work?**

Generally, once a treaty body has decided that the State party violated the rights of the complainant, it gives 3 months to the State to provide information on the steps taken to give effect to the Committee's views. If the State party fails to take appropriate steps, the Human

Rights Committee and the Committee against Torture refer the case to one of their members, the Special Rapporteur on Follow-up of Views for consideration of further measures to be taken. Follow-up measures include, for example, specific requests to the State party and requests to meet with the State party's representatives to discuss the action taken.

The CRC will be able to draw from those best practices when it will set its own working methods under its Rules of procedure. Special consideration for the vulnerability of children will need to be taken into account to ensure that the follow-up of decisions is as effective as possible.

### **8 – What could ensure that the complaint is processed in a quick manner (so that children do not become adults by the time of the decision and so that their hopes are not raised unnecessarily)?**

It is hard to foresee the length of a procedure that doesn't exist yet. In reality, communications are generally dealt with within 1 to 2 years (CAT, CEDAW, CERD) with the exception of the Human Rights Committee (ICCPR) which may take several years to adopt its Views.

It is of course paramount for children that their communications are processed in a quick manner. This can be ensured by the addition of the terms “without delay” in several provisions of the OP concerning the process, such as when the Committee notifies a communication to the attention of the State party concerned, when the Committee transmits its views on the communications, etc.

Details on the working methods of the Committee will be provided in its Rules of procedure and those should be designed to ensure swiftness in processing communications. If delays in examining communications appear to exceed 'reasonable time', several additional measures could be further envisaged. For example, views on communications could be adopted with a majority vote instead of trying to reach consensus, with the possibility of attaching individual opinions, as it is the case in regional systems (ECHR, IACHR, ACHR); quasi identical communications could be clustered, etc.

### **9 - What would ensure that such a mechanism would be used (see example of OP CEDAW)?**

The little use made of OP CEDAW till now can be used as a lesson for the CRC. Little use of a communications procedure does not mean that violations do not occur. We believe that to ensure that a mechanism is fully used, it must be widely known by all relevant stakeholders, in this instance, by adults and children alike. It is up to all concerned parties to ensure that children all around the world and those working on their behalf are aware that such a remedy is available.

A provision explicitly calling for raising awareness about the communications procedure could be included in the OP in similar terms to those existing under the CRC and its existing Protocols (see Art. 42 CRC, Art. 9 OP CRC on Sale of Children and Art. 6 OP CRC on Children in Armed Conflict): “States Parties undertake to make the principles and provisions of the Optional Protocol widely known by appropriate and active means, to adults and children alike”.

Other types of initiatives, that have already proven to be successful for raising awareness about the Convention and its existing Protocols, could also be used for the new OP on a communications procedure. For example, websites specifically designed for children could present and explain the communications procedure to children. The NGO Group for the CRC, which has the mission of promoting, implementing and monitoring the UN Convention on the Rights of the Child, and has notably facilitated the creation of and supported the work of

national coalitions for the Convention, is ready to play a similar role once the communications procedure will enter into force. Information offices on children's rights and assistance and advice to children on submitting an application to the Court will be key to ensure that the communications procedure is widely used.

## Annex 1: Glossary

**ADJUDICATE:** [to hear and decide on a case, using the judicial process.](#)

**AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD** spells out the rights that African States must ensure for children living in their jurisdiction. It is the main instrument of the African human rights system for promoting and protecting child rights.

The Charter, which was adopted by the Organisation of African Unity (now the African Union) in July 1990, entered into force in November 1999. The Charter was the first regional treaty to address child rights. The Charter is divided into two parts of four chapters. Part one deals with the rights, freedoms and duties of the child and has 31 articles. Part two deals with States' obligations to adopt legislative and other measures to implement the provisions of the Charter and has 18 articles.

The African Charter was created partly to complement the UN Convention on the Rights of the Child (CRC), but also because African countries were under-represented in the drafting process of the CRC, and many felt another treaty was needed to address the specific realities of children in Africa.

**CASE LAW:** Decisions and interpretations made by judges when deciding on legal matters.

**CONVENTION:** Also called Treaty or Covenant, it is a binding agreement between states. Conventions are stronger than Declarations because they are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, Member States can then ratify the convention, promising to uphold it. The UN can then censure governments that violate the standards set forth in a convention.

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC):** adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. Since its adoption, it has been ratified more quickly and by more governments than any other human rights instrument. The USA and Somalia are the only countries which have failed to ratify. The Convention is also the only international human rights treaty that expressly gives non-governmental organisations (NGOs) a role in monitoring its implementation (under Article 45a).

**COMPLAINANT:** Also 'plaintiff' – the person or party bringing a case, for example a child who has had his/her rights breached.

**CORE GROUP:** This refers to the initial group of States that sponsored the Resolution of the Human Rights Council to establish the Open Ended Working Group for the Optional Protocol under the CRC.

**COVENANT:** Binding agreement between states; used synonymously with Convention and Treaty. The major international human rights covenants, both passed in 1966, are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

**ECOSOC STATUS/ CONSULTATIVE STATUS:** Refers to a status that NGOs and other organisations may gain in order to participate in the work of the UN. Consultative status enables qualifying organisations to serve as technical experts, advisers and consultants to

governments and Secretariat. Sometimes, as advocacy groups, they further UN themes, implementing plans of action, programmes and declarations adopted by the United Nations.

**INCORPORATION:** Assimilation of international treaties into domestic law.

**INQUIRY PROCEDURE:** A Committee may initiate on their own initiative inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

**INSTRUMENT:** Legal tool used to designate, define and harmonise international human rights standards, for example Convention on the Rights of the Child, Convention on the Rights of Persons with disabilities, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

**INTERIM MEASURES:** Article 5 of the recently adopted Optional Protocol for the International Covenant on Economic, Social and Cultural Rights providing a complaints mechanism states that: "At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

**JURISPRUDENCE:** The collection of reported cases from previous legal hearings that together form the body of law within a jurisdiction.

**MANDATE:** The literal definition of 'mandate' is simply a 'command' or 'instruction.' In the context of the UN, it is frequently used to refer to the document describing how a particular role is to be fulfilled. For example, the mandate of the Special Representative on Violence Against Children may include investigation into the different types of violence experienced by children. Or you might say s/he is mandated to investigate alleged cases of violence against children as perpetrated by governments, for example.

**MECHANISM:** A process or body that monitors the implementation of an instrument(s). The mechanism is usually created by the instrument that it monitors. E.g. the Committee on the Rights of the Child was created by [Article 43](#) of the Convention on the Rights of the Child. Other examples include the Human Rights Council, Special Rapporteurs, complaints procedure 1503.

**MEMBER STATES:** Countries that are members of the United Nations or other relevant inter-governmental body.

**MODALITIES:** Usually used in reference to the participation of non-governmental organisations in UN meetings, 'modalities' refers to specific measures or conditions.

**NATIONAL COALITIONS:** NGOs that collaborate on activities such as reporting to the Committee on the Rights of the Child by presenting one joint Alternative Report to the Committee. National Coalitions work closely with the NGO Group for the Convention on the Rights of the Child which provides them with technical support, training, and other support. [Read more](#)

[MERCOSUR](#) is an economic and political bloc of South American States which has been compared to the European Union. It stands for el Mercado Común del Sur (the Common Market of the South). It was founded by Argentina, Brazil, Paraguay and Uruguay in 1991 under the Treaty of Asunción. The initial goal of MERCOSUR was to establish a common

economic market. In 1998 it also created a political forum with the aim of establishing common positions and resolving issues affecting the region. The political mechanism was expanded in December 2006 with the creation of a common parliament. The parliament, which first met in May 2007, will serve as an advisory committee for full Member States.

**NGO GROUP FOR THE CRC:** The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations, which work together to facilitate the implementation of the UN CRC. It was originally formed in 1983 when members of the NGO Group were actively involved in the drafting of the Convention. Since the adoption of the Convention, the NGO Group has been supporting the work of national and international NGOs as well as the Committee on the Rights of the Child to monitor and implement the Convention and its Optional Protocols.

**OMBUDSMEN:** An ombudsman is an official, usually appointed by the government, parliament or other institutions such as the European Union, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. In some jurisdictions, the Ombudsman is referred to, at least officially, as the 'Parliamentary Commissioner' (e.g., the West Australian state Ombudsman). As well as for a government, an ombudsman may work for a corporation, a newspaper, an NGO, or even for the general public. In the case of children, such roles may be referred to as both 'Children's Ombudsman' or 'Children's Commissioner'.

**OPTIONAL PROTOCOL (OP):** An optional protocol to a treaty is a multilateral agreement that States parties can ratify or accede to, intended to further a specific purpose of the treaty or to assist in the implementation of its provisions.

**PETITIONS:** A collective term embracing the various procedures for bringing complaints before competent treaty bodies. Petitions may consist of complaints from individuals or from States parties alleging violation of the treaty provision by a State party.

**QUASI-JUDICIAL:** Having to do with powers that are to some extent judicial, for example human rights commissions may have quasi judicial powers

**RATIFICATION, RATIFY:** Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

**RULES OF PROCEDURES:** The formal rules adopted by a treaty body to govern the way in which it undertakes its business. Each committee is empowered by the relevant treaty to adopt its own rules of procedure. The rules of procedure usually cover such matters as election of officers and procedures for adopting decisions especially where no consensus can be reached. Rules of procedures are related to, but distinct from, working methods.

**SPECIAL PROCEDURES:** They are a way for the [Human Rights Council](#) (as well as the public) to find out about human rights situations. They are the name given to '[mechanisms](#)' created by the Commission on Human Rights (now the Human Rights Council) to address human rights situations in specific countries, or to address specific human rights themes eg, the right to education. Usually, Special Procedures are actually individual people, or groups of people (called Working Groups). If they are individuals, they may be called a Special Rapporteur, a Special Representative or an Independent Expert.

**SPECIAL RAPPORTEUR:** Special Rapporteur is not a title used exclusively by the United Nations, for example there are also Special Rapporteurs for the African Union. But they are all concerned with monitoring and investigating human rights. You can see a [list of United Nations Special Rapporteurs, including 17 frequently asked questions about them](#). Read the [latest reports of the Special Rapporteurs](#) relevant to children

**STATES PARTY(IES):** A State party to a treaty is a State that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval of accession etc, where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law.

**TREATY:** Formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with Convention and Covenant. When Conventions are adopted by the UN General Assembly, they create legally binding international obligations for the Member States who have signed the treaty. When a national government Ratifies a treaty, the articles of that treaty become part of its domestic legal obligations.

**TREATY BODIES:** The committees formally established through the principal international human rights treaties to monitor States Parties' compliance with the treaties. Seven Treaty bodies have been set up for the core UN human rights treaties to monitor states parties' efforts to implement their provisions. There will be eight once the new Convention on the Rights of Persons with Disabilities enters into force and spawns its own committee.

## Annex 2: Relevant resolutions of the UN Human Rights Council

### Resolution A/HRC/RES/11/1 – adopted in March 2009

#### 11/1 Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure

*The Human Rights Council,*

*Recalling* the Principles proclaimed in the Charter of the United Nations and that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recalling* that, in the Vienna Declaration and Programme of Action adopted in June 1993 by the World Conference on Human Rights (A/CONF.157/23), the World Conference reiterated the principle of “First Call for Children” and emphasized that the rights of the child should be a priority in the United Nations system-wide action on human rights,

*Welcoming* the almost universal ratification of the Convention on the Rights of the Child and the ratification by more than 120 States of each of the two Optional Protocols to the Convention,

*Taking note* of Council resolution 10/14 of 26 March 2009, in which the Council celebrated the twentieth anniversary of the Convention on the Rights of the Child, and called for effective implementation of the Convention by all States parties to ensure that all children may fully enjoy all their human rights and fundamental freedoms,

*Noting with interest* general comment No. 5 (2003) of the Committee on the Rights of the Child, in which the Committee emphasized that children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights,

*Noting* that procedures allowing for individual communications have been established for other core international human rights treaties, namely, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and for the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities,

*Noting also* that children and their representatives lack a communications procedure under the Convention on the Rights of the Child by which communications concerning the effective implementation of the rights set out in the Convention can be considered by an appropriate committee of independent experts,

*Recalling* the view of the Committee on the Rights of the Child, expressed by its Chairperson in her oral report to the General Assembly at its sixty-third session, that the development of a communications procedure for the Convention on the Rights of the Child would significantly contribute to the overall protection of children’s rights,

1. *Decides* to establish an Open-ended Working Group of the Human Rights Council to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a

communications procedure complementary to the reporting procedure under the Convention;

2. *Also decides* that the Working Group shall hold its first session for five working days in Geneva before the end of 2009, within existing resources;

3. *Further decides* to invite a representative of the Committee on the Rights of the Child to attend the session as a resource person and, where appropriate, relevant United Nations special procedures and other relevant independent experts, and also invites them to submit inputs to the Working Group for its consideration;

4. *Requests* the Working Group to submit a report on progress made to the Council for consideration at its thirteenth session.

*27<sup>th</sup> meeting*

*17 June 2009*

[Adopted without a vote.]

## **Resolution A/HRC/RES/13/3 – adopted in March 2010**

### **13/3 Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure**

The Human Rights Council,

Recalling Human Rights Council resolution 11/1 of 17 June 2009 on the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure,

Recalling also General Assembly resolution 64/146 of 18 December 2009 on the rights of the child,

Bearing in mind paragraph 33 (p) of General Assembly resolution 64/146, in which the Assembly called upon States to ensure that child-sensitive procedures were made available to children and their representatives so that children had access to means of facilitating effective remedies for any breaches of any of their rights arising from the Convention on the Rights of the Child through independent advice, advocacy and complaint procedures, including justice mechanisms, and that their views were heard when they were involved or their interests were concerned in judicial or administrative procedures in a manner consistent with the procedural rules of national law,

Noting with interest general comment No. 5 (2003) of the Committee on the Rights of the Child, in which the Committee emphasized that children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights, and general comment No. 12 (2009), in which the Committee stated that the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention on the Rights of the Child,

Recalling the view of the Committee on the Rights of the Child, expressed by its Chairperson in her oral report to the General Assembly at its sixty-third session, that the development of a communications procedure for the Convention on the Rights of the Child would significantly contribute to the overall protection of children's rights,

1. Takes note of the report on its first session, held in Geneva from 16 to 18 December 2009, of the Open-ended Working Group established under Human Rights Council resolution 11/1 to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure complementary to the reporting procedure under the Convention (A/HRC/13/43);
2. Decides to extend the mandate of the Open-ended Working Group until the seventeenth session of the Council, and also decides that the Open-ended Working Group shall meet for up to ten working days and report to the Council not later than at its seventeenth session;
3. Also decides to mandate the Open-ended Working Group to elaborate an optional protocol to the Convention on the Rights of the Child to provide a communications procedure and, in this regard, requests the Chairperson of the Open-ended Working Group to prepare a proposal for a draft optional protocol, taking into account the views expressed and inputs provided during the first session of the Working Group in December 2009 and giving due regard to the views of the Committee on the Rights of the Child and, where appropriate, to the views of relevant United Nations special procedures and other experts, to be circulated by September 2010 in all the official languages of the United Nations with the proposal for the draft optional protocol to be used as a basis for the forthcoming negotiations;
4. Further decides to invite a representative of the Committee on the Rights of the Child to participate in

the Open-ended Working Group as a resource person and, where appropriate, relevant United Nations special procedures and other relevant independent experts;

5. Requests the Office of the United Nations High Commissioner for Human Rights to update and publish the report of the Secretary-General on the comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the United Nations system, published on 22 November 2004 (E/CN.4/2005/WG.23/2), and to present that report to the Council at its fifteenth session;

6. Requests the Secretary-General and the Office of the High Commissioner to continue to provide the Open-ended Working Group with the assistance necessary for the fulfilment of its mandate, in accordance with General Assembly resolution 64/245 of 24 December 2009 on special subjects relating to the proposed programme budget for the biennium 2010–2011.

41st meeting  
24 March 2010  
[Adopted without a vote]

## Annex 3: Feedback on Your Lobbying

In order to coordinate our actions both at national and at international levels, it would be really great if you could complete this form and return to the NGO Group for the CRC via email to [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

Name	
Organisation	
Contact details (email, telephone/fax number or Skype name, full postal address of the organisation and of the key person to contact)	
Does your organisation belong to a national child rights coalition/network? If so, which one (include contact details)	
What is your Government's position on the OP CRC? What are you Government's main concerns/questions?	
Will your Government participate in the Open-ended Working Group in December?	
If so, please provide information about your Government's Delegation (who, how long are they staying, any particular background information on individuals we should know about?)	
Who you contacted – Name, Position and Department, when?	
Any other relevant information?	

## **Annex 4: Questionnaire on the need for the communications procedure**

For the new OP to be an effective complaints mechanism, we need to ensure that it includes new provisions, ie. that do not exist under existing international mechanisms, that take into account the special status of children.

To help us provide the Working Group with best practices of child-sensitive procedures but also with concrete examples and cases where remedies proved to be ineffective, please fill out this questionnaire and send it back to us at [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

### **1- Gaps in child rights protection**

#### **1.1. Examples of child rights cases claiming rights enshrined by the CRC that were brought to your attention and that you could not examine/pursue:**

- Why were you not able to examine/pursue that case (lack of material/territorial jurisdiction, lack of/ineffective access to justice for children, lack of/ineffective national remedies, lack of representation for children, etc.)?
- What did you do about the case (referral to another body/institution, informal mediation (“bons offices”), etc.)?

#### **1.2. If you have experience in a child specific type of communication procedure:**

- What changes has it produced with regard to implementation of child rights (at the national/regional levels)? What kind of remedies can be provided?
- What rights guaranteed under the CRC cannot be invoked before this communication procedure? Why? Is there any other type of admissibility restrictions (material/territorial jurisdiction)?

#### **1.3. If you have experience in a regional mechanism addressing child rights violations:**

- What are the rights guaranteed under the CRC that cannot be invoked before this regional mechanism (material/territorial jurisdiction)? Why?
- What changes has it produced with regard to implementation of child rights (at the national/regional levels)? What kind of remedies can be provided?

### **2 - Best practices regarding the use of judicial/quasi-judicial remedies by children and child representation that could be implemented at the international level**

Based on your experience (at national, regional and/or international level):

- How did you ensure use of mechanisms by child complainants?
- Have you used child-friendly materials? What were the results?
- How does representation of child victims work in your context?
- What are the safeguards against instrumentalisation/manipulation of child victims?
  
- What would be the best way to achieve the use of a communications procedure under the CRC by children and, where needed, child representation?
- If there is a child ombudsperson in your country, what has been his/her role with regard to complaints about violations of child rights? What could be his/her role in the context of a communications procedure under the CRC?